



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Legislative Analysis**

**Internal Management and Fiscal  
Responsibility Committee**

February 16, 2006

2:00 PM

Commission Chamber

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Commission Auditor

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**Legislative Analysis**

**Internal Management and Fiscal Responsibility Committee  
Meeting Agenda**

**February 16, 2006**

Written analyses for the below listed items are attached for your consideration in this Legislative Analysis.

**Item Number(s)**

2F
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If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analyses prepared by:  
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## LEGISLATIVE ANALYSIS

### *RESOLUTION DIRECTING THE COUNTY MANAGER TO INCLUDE IN THE COUNTY CONTRACTS ADDITIONAL PROVISIONS TO PROTECT PAYMENTS TO SUBCONTRACTORS AND MATERIAL SUPPLIERS*

COMMISONER REBECA SOSA

#### I. SUMMARY

This is requesting the Manager to work with the County Attorneys office to include in County construction contracts additional provisions to protect subcontractors and material suppliers from non-payment by County contractors.

#### II. PRESENT SITUATION

Miami-Dade County's current policy for addressing prompt payment to subcontractors is delineated under Administrative Order 3-19 and Ordinance 94-40. All County Contract (and Public Health Trust contracts) shall contain provisions of Ordinance 94-40 that include:

- To provide for expedited payment to small businesses, black, Hispanic, women-owned business enterprises and disadvantaged business enterprises (CSBE)
- To provide interest payments on late payments made by the County and the Public Health Trust
- To create a dispute resolution process for payment of County and Public Health Trust obligations.
- Consequences such as suspension, termination and debarment for non-adherence the issuance of prompt payments

Numerous CSBE subcontractors have expressed concerns of the County contractor's failure to pay them for goods and services rendered even when these contractors themselves have been paid by the County. These CSBE concerns have been raised continuously to Commissioners in BCC meetings and in Small Business Workshops.

#### III. POLICY CHANGE AND IMPLICATION

Currently, there are three Commissioner sponsored items to deal with this growing concern that is affecting small business owners who rely on the payment stream for the work they perform.

The **first** resolution introduced by **Commissioner Jordan** specifically deals with CSBE's outstanding claims as a result of their participation in the construction of the North Terminal Development (NTD) at Miami International Airport (MIA), whether they are prime contractors, first, second, third or fourth tier subcontractors. This resolution directs

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the Manager to develop a process for reviewing and resolving the CSBE claims to be submitted in 45 days. This resolution was approved in December 2005.

The **second** resolution was introduced by **Commissioner Moss** which seeks to find an alternative to the County's current dispute resolution element which is viewed as unsatisfactory. The resolution suggests that implementing a third party arbitrator should produce a more prompt resolution of disputed billings for payment to subcontractors. The resolution also requires the Manager to develop appropriate language requiring that all disputed billings shall be submitted to final, binding arbitration for resolution. Additionally, disputed billings will require depositing in escrow sums equal to the amount of disputed claim, to be disbursed in accordance with the decision of the arbitrator. The proposed language is to be submitted before the Board of County Commissioners within 60 days. This resolution was heard before the Community Empowerment & Economic Revitalization Committee on February 14, 2006 and awaiting final approval in March 2006.

The **third** resolution was introduced by **Commissioner Sosa** which requires the Manager in conjunction with the County Attorney's Office to include additional specifications to protect subcontractors from non-payment by County contractors that also include escrow retainage, the requirement and prosecution of expedient alternate dispute resolution processes as a condition of payment. This resolution requires the Manager to report before the Board of County Commissioners within 90 days his proposed policy recommendations. This item is to be heard before the Internal Management and Fiscal Responsibility Committee on February 16<sup>th</sup> 2006.

#### **IV. ECONOMIC IMPACT**

Economic impact cannot be determined at this time.

#### **V. COMMENTS AND QUESTIONS**

The County will have to verify each individual agreement to determine validity of claims, which could add to the existing lengthy process of dispute resolution.

There are different situations that give rise to non-payment; the Manager must also include how to address each one.

Please see the attached article regarding the subcontracting firms and their unpaid claims.

Posted on Wed, Feb. 15, 2006

## MIAMI AIRPORT

# Small firms left unpaid -- and angry

Small contractors were eager to get a piece of the massive North Terminal project at Miami International Airport. Now many of those firms are suffering because they haven't been paid.

BY TERE FIGUERAS NEGRETE AND STEVE HARRISON  
[sharrison@MiamiHerald.com](mailto:sharrison@MiamiHerald.com)

When Miami-Dade County aggressively recruited small firms to work on Miami International Airport's North Terminal, Fortuna Bichachi leaped at the chance for a piece of the project.

Four years later, Bichachi says her company is owed \$270,000 for structural work at MIA -- and the county is dragging its feet in paying the bills.

She and her husband, Moises, have had to take out a second mortgage on their Miami Beach home to pay for materials. They sold a company truck. They slashed staff from 30 to five.

"Our house was fully paid for, and now we are \$450,000 in debt," Fortuna Bichachi said.

The Bichachis are not alone in claiming Miami-Dade County has nearly crippled their businesses.

Their company, ELCI Construction Group, is one of more than 40 contractors who find themselves caught in the aftermath of a battle among Miami-Dade County, American Airlines and construction firm Turner Austin Airport Team over construction of the terminal. Since the county took control of the project from American and Turner Austin last summer, the bills have piled up. The 40-plus contractors -- many of them small firms -- claim to be owed \$151 million.

Eight firms have sued the county to collect.

"They pulled the carpet out from under us," said Ivonne Munne, owner of Miami-based Carivon Construction, who says she has taken out a second mortgage on her home to pay her bills.

## CONSULTANT HIRED

The aviation department says it's working quickly to review claims, though admits the process has taken too long. It has hired a consultant -- cost: \$12 million over five years -- to help.

But so far, since last summer, it has paid \$806,829 in claims to one firm -- MCM Corp. of Miami.

MCM, which says it's owed about \$12 million, is one of eight firms that has sued the county.

The history of the massive North Terminal project goes back a decade.

The North Terminal is a massive extension and reconfiguration of four existing concourses. Miami-Dade commissioners in 1995 handed over the reins of the ambitious project to American Airlines, which would occupy the new terminal, under the assumption the private sector could do the job quicker and cheaper.

At that time, Miami-Dade encouraged small businesses to bid on the work, promising them a slice of a lucrative pie.

"There was this idea that we're going to share the wealth," said John Cosper, deputy director for the capital improvement program at MIA who has been on the job 13 months and inherited the project.

But that magnanimity had unintended and ironic consequences.

Projects divided among dozens of contractors and their subcontractors often made even simple endeavors difficult to orchestrate -- creating bottlenecks on projects that prolonged delays and beefed up costs. At one point, there were 39 different architects working on the project, Cosper said.

Last year, with anticipated costs spiraling toward the \$2 billion mark -- nearly double the original estimate -- the county took control of the project from American and the Turner Austin Airport Team. American Airlines agreed to pay \$105 million toward current and future claims.

New Aviation Director Jose Abreu, who has been at MIA for six months, said he has never seen a construction project so mangled. MIA hopes it can be finished in three years.

### **`DISASTER'**

"The county has realized they have a complete disaster on their hands," said Scott Masson, executive vice president of Miami Lakes-based Lotspeich Co., which says it's owed \$5.5 million for drywall and other work. ``They have the money, and we are sitting here with file drawers filled with work orders and change orders."

While most assumed handing off the project to American would spare businesses from dealing with a bulky bureaucracy, many small companies say they are -- years later -- hopelessly entangled in red tape. The county's takeover of the project stalled payments, but some contractors said they also were paid late -- or not enough -- under Turner Austin.

If the county decides to pay a claim, the county's Regional Transportation Committee, then the Board of County Commissioners, must still approve any payment. That will add weeks to an already long process. The RTC will vote Thursday on claims for seven firms totaling \$1.4 million.

"I sympathize with everyone, especially the small-business owners," Cosper said. ``We are trying to help them first."

The county is taking its time and using consultant Alpha Construction and Engineering in part because it is worried about being fleeced by contractors grabbing for cash.

### **PAPERWORK**

MIA is requiring contractors to submit detailed paperwork showing their time and expenses on each job. It has already rejected \$19 million in claims and turned away another \$6.2 million because firms didn't submit documentation.

"It's a very exhaustive process, and you need to make sure the taxpayers aren't placed in a position of jeopardy. You don't want to pay something that's not due," said Chris Mazzella, Miami-Dade's inspector general. ``I think the process is a sound one."

But Mazzella said the county also has an obligation to pay its debts in a timely manner: ``You've got to make sure things don't get bogged down in a bureaucratic maze."

Many contractors are angered by MIA's willingness to pay consultants.

### **WHY NOT US?**

"Why are they paying them so much money?" asked Andres Solares, owner of masonry firm Talmac, whose eight claims total \$2.83 million. ``Why are they paying them and not us?"

Another problem is there are four so-called "third-tier" firms, such as ELCI and Talmac, that aren't a part of this claims process. Those contractors didn't have contracts directly with Turner Austin or American. They must wait until their employers get paid, and then haggle with the ``second-tier firms."

County Commissioner Barbara Jordan said the county erred in not setting up a system to deal with those firms. Jordan sponsored a resolution last month directing the county to settle claims only after contractors have promised to pay off smaller companies they have done business with as well.

The county would have to verify those agreements, which could add to the already hefty legwork and to the possibility of delays, but Jordan says it's only fair.

"We didn't know that these companies were going to be hung out to dry," she said.